

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7467 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHARMENDRA ALIAS GUDDU TARSINHSANGAR (THAKUR)

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
MR SR DIVETIYA ADDL.GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 05/02/98

ORAL JUDGEMENT

The petitioner, who has been detained in custody under the order of detention dt. 30th September, 1997 passed by the Police Commissioner, Ahmedabad City, invoking Sec.3(2) of Prevention of Anti-Social Activities Act (for short "the Act"), calls in question the legality and validity of the order.

2. A few facts may in brief be stated so as to consider the rival contentions in proper perspective. Against the petitioner, three complaints in Amaraiwadi Police Station and one complaint in Odhav Police Station with regard to the offence punishable under Sec.66(b) and 65(E) and 81 of the Bombay Prohibition Act, came to be lodged. From those complaints, during the course of the investigation, it was found that the petitioner was dealing in liquor and because of his bootlegging activities, the public law was being disturbed. The Commissioner of Police, while perusing papers and record in Police Stations could see that by his nefarious activities disturbing public order, the petitioner was putting the persons to imminent danger or damage to the properties. He by force tried to bend the people to his way and those who refused or resisted, were beaten or harassed and often showing knife, he used to frighten, the people, as a result, often there was chaos and stampede. A tempo of public life was disturbed. To check such activities, stern action was found necessary, but on going through his File, it was found that to control his activities, general law was sounding dull, and the detention order was the only way out to control his activities. The Police Commissioner then passed the order of detention, pursuant to which at present the petitioner is arrested and is in custody. He has, therefore, challenged, preferring this application, the legality and validity of that order.

3. Mr. Patel, the learned advocate representing the petitioner, on several grounds, has submitted that the order is not tenable at law, but after query was made, he tapered down his submission to the representation, rendering the order illegal. I will, therefore, confine only to that point going to the root of the case. What is submitted is that when the person is arrested and detained, without any trial, he cannot be undervalued and whatever representation he makes, must be promptly taken on hand and with utmost expedition, the same should be disposed of. The representation in this case when not considered within reasonable time, the detention order is required to be held illegal.

4. Mr. Divetiya, the learned APP has submitted that the representation dt. 17th October, 1997 was received by the Department on 24th October, 1997 and the same was taken on hand for consideration immediately. The File was sent to the higher officer for final decision, but it was delayed because of 25th, 26th, 30th, 31st October, 1997, 1st, 2nd, 8th and 9th November, 1997, the office was owing to holidays, was closed, and so no progress in

dealing with the representation was made. There was, therefore, in fact, because of such holidays, no delay and promptly the representation was considered and final order on 10th November, 1997 was passed.

5. Before I proceed, it would be better, if I refer the decision of the Supreme Court, making the law clear on the point. In the case of Harish Pahwa Vs. State of U.P. and Others, AIR 1981 SC 1126, what happened was that the representation in question was received on 4th June, 1980 and no action for two days was taken. On 6th June, 1980 comments were called for. From 7th June, 1980 to 9th June, 1980, representation was under consideration of the Government and after 4 days from 13th June to 16th June, 1980, it was under consideration of the Law Department, and then from 17th June, 1982 to 19th June, 1982, it was under consideration of the Department, concerned. The Supreme Court, was then in view of such facts of the case, constrained to state that in its opinion, manner in which the representation was dealt with, reflected sorry state of affairs in the matter of consideration of the representation made by the person detained without trial, and there was no explanation, why no decision was taken in reference to representation on 4th, 5th and 25th June, 1980. According to the Supreme Court, such representation must be dealt with and final order thereof must be passed with utmost expedition, meaning thereby, it must be taken for consideration as soon as that representation is received and should be dealt with continuously until final order is taken and communicated to the detenu without any unjust or unnecessary pause or a halt. If that is not done, the detention has to be declared unconstitutional.

6. In view of such law, if the case on hand is considered, the detention has to be declared unconstitutional. No affidavit explaining the delay, after the receipt of the representation is filed. There is also nothing on record going to show why decision was not taken on 27th or 29th October 1987; and then from 3rd to 7th November, 1997, the days on which the office was working. It seems on working days also, the representation was considered casually attaching no importance to the liberty. Hence the order of detention cannot be maintained, and the detention, pursuant to the order, must be held to be unconstitutional in view of the decision of the Supreme Court in the case of Harish Pahwa (supra).

7. For the aforesaid reason, this special civil application is allowed. The detention order dt. 30th

September, 1997 passed by the Police Commissioner, Ahmedabad City, is held unconstitutional and the petitioner is ordered to be set at liberty forth with, if no longer required in any other case. Rule accordingly made absolute.

(ccs)